IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 519 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ARBUDA METAL INDUSTRY - Petitioner
Versus
GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION & 1 - Respondents

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Appearance :
MR JA ADESHRA for Petitioner.
MR HARDIK C RAWAL for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 14/08/2007
ORAL JUDGMENT

1. The petitioner has filed this petition under Article 227 of the Constitution of India challenging the order passed by the learned City Civil Judge in Civil Misc. Application No. 139 of 2002 on 29.07.2002 whereby delay caused in filing the appeal against the order passed under Section 5 (2) of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 was not condoned and application was rejected. The petitioner has also challenged the order dated 28.10.2002 passed by the learned City Civil Judge in Review Application No. 01 of 2002 whereby the said application was rejected.

2. It is the case of the petitioner that petitioner is a partnership firm and it had purchased a plot bearing No. CL/348 situated at GIDC Estate, Odhav, Ahmedabad. The said property was originally allotted to one M/s. Hasmukhlal & Co. in the year 1975 by the GIDC. The said M/s. Hasmukhlal & Co. was to pay Rs.74,117/- to the GIDC towards the cost of the said property and as per the allotment letter dated 15.09.1975, it was decided that the total cost of the said plot was Rs.74,117/-, out of

which 35% was to be paid at the time of allotment and remaining balance of 65% i.e. Rs.59,600/- was to be paid within a period of five years from the date of allotment in 20 equal quarterly installments.

3. On 12.05.1986, the petitioner purchased the property from the said M/s. Hasmukhlal & Co. and since then had become the full owner of the plot in question and the said M/s. Hasmukhlal & Co. had no right, title or interest in the said plot situated at GIDC Estate, Odhav, Ahmedabad. It is also the case of the petitioner that No Due Certificate was issued by the respondent – GIDC and the said plot was transferred in the name of the petitioner on 12.05.1986.

4. In the year 2002, the petitioner came to know that the premises in question was allotted to third party and hence, the petitioner approached GIDC office and came to know that the possession of the said plot was taken over by the GIDC. The petitioner, therefore, filed Civil Suit No. 700 of 2002 for permanent injunction and declaration. In the said suit, the City Civil Court, Ahmedabad had directed GIDC to produce relevant

documents regarding passing of eviction order, if any, and for taking over of the possession of the plot in question. Pursuant to the said direction, the documents were produced by GIDC, especially, the order dated 11.02.1999 passed under Section 5 (2) of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 pursuant to which the possession of the premises was taken on 11.03.1999 and also the Panchnama dated 11.03.1999.

5. The petitioner thereafter challenged the said order before the City Civil Court, Ahmedabad and an application for condonation of delay was moved being C.M.A. No. 139 of 2002. The said application was rejected by the City Civil Court, Ahmedabad mainly on two grounds :- (i) there was delay of about 3 years and there was no explanation for the delay so caused. (ii) While rejecting the said application, the City Civil Court has also taken note of the fact that the petitioner has filed Civil Suit No. 700 of 2002 wherein similar prayer was made.

6. The petitioner has thereafter moved Review Application

No. 01 of 2002 before the City Civil Court, Ahmedabad raising the contention that the order was passed under some mistake and the Court was in the impression that the order was passed against the petitioner. But in reality, no order was passed against the petitioner. The order was passed against third party. While rejecting the said application, the Court observed that the reasons stated in the application for condonation of delay by the petitioner were not germane. It is further stated that review application is not maintainable under O. 47, Rule 1 of the Code of Civil Procedure, 1908. There is no provision under the Act to file review application and on this ground, the said application was rejected.

7. Both these orders are under challenge in the present petition.

8. Mr. J. A. Adeshra, learned advocate appearing for the petitioner has submitted that despite the fact that the property is standing in the name of the petitioner, no notice was issued on the petitioner. The order which was challenged in appeal before the City Civil Court was passed in the name of M/s. Hasmukhlal & Co. and the

petitioner was not aware about the said order. The petitioner came to know about the said order only when the suit was filed and pursuant to the direction issued by the City Civil Court, orders were produced. At that time, the said order was challenged in appeal before the City Civil Court, Ahmedabad. He has, therefore, submitted that if the date of knowledge of the order challenged, is taken into consideration, there is no delay and the learned City Civil Judge, Ahmedabad ought to have condoned the delay and decided the appeal on merit.

9. Mr. Hardik Rawal, learned advocate appearing for the respondent, on the other hand, has submitted that three notices were issued at the address of the suit premises and after service of the same, no amount has been paid by the petitioner. Thereafter in 1999 proceedings were initiated. Statutory notices were affixed on the premises. At the time of drawing panchnama also, proper care was taken. From 1999 onwards till 2002, it is hardly to believe that the petitioner was not aware about the proceedings. He has, therefore, submitted that the City Civil Court has rightly passed an order rejecting the application for condonation of delay and review

application was also rejected for the same reason. He has, therefore, submitted that the impugned orders are in accordance with law and it cannot be said that it is in excess of jurisdiction or perverse and this Court should not interfere while exercising its power under Article 227 of the Constitution of India.

10. Having heard learned advocates appearing for the respective parties and after having gone through the orders and the submissions of the parties, the Court is of the view that admittedly, notices have not been issued in the name of the petitioner nor even these notices are served on the petitioner. It, therefore, appears to the Court that the order of eviction passed by the competent authority is in violation of the principles of natural justice and when the said order is challenged before the City Civil Court, should not have been thrown merely on the ground that delay has not been properly explained. An explanation is given by the petitioner that during the course of suit proceedings, the petitioner came to know about the eviction order and immediately thereafter, the said order was challenged. The Court is, therefore, of the view that instead of rejecting the application for

condonation of delay, the learned City Civil Judge ought to have decided the appeal on merits. If there are outstanding dues and the same have not been paid, the authorities are entitled to initiate action but that too after affording adequate opportunity of being heard. The Court, therefore, set aside both these orders only on the ground that delay has been properly explained and order of eviction ought to have been decided on merits. The Court, therefore, directs the City Civil Court to decide the appeal looking to the facts and circumstances of the case and on the merits of the matter. The Court has not expressed any opinion as to whether the appeal be entertained in view of the pendency of suit allegedly praying for the same relief. It is for the appellate Court to decide all these issues at the time of deciding the appeal on merits.

11. It is open for the parties to lead evidence in support of their contentions including the contention raised by Mr. Rawal before this Court that if there is any evidence pointing out that the petitioner was communicated about the impugned action and notice was issued or the petitioner was aware about the eviction proceeding. It is

also made clear that allowing this petition would not confer any right on the petitioner to claim any damages from the respondent GIDC on the alleged ground that at the time of taking possession of the premises by the GIDC, plants and machineries worth Rs. 40 Lacs were lying in the premises. This clarification is made keeping in mind the pleadings and submissions made before the Court.

12. Subject to the above direction and observation, the petition is accordingly allowed. Rule is made absolute to the above extent without any order as to costs.

[K. A. PUJ, J.]

Savariya